IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

Crl.MC.No. 656 of 2007()

AGAINST THE JUDGEMENT/ORDER IN BA.579/2007
CRIME NO.284/2002 OF KONDOTTY POLICE STATION

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PETITIONER/ACCUSED NO.4:

V.B.MOHAMMEDKUTTY,S/O.BAPPU,
AGED 49 YEARS, RESIDING AT VATTAPPARAMBIL HOUSE,
P.O.KADANGODU VIA,KUNAMKULAM,THRISSUR.

BY ADV. SRI.C.S.MANU
SRI.S.K.PREMRAJ

RESPONDENTS/COMPLAINANT & INVESTIGATING OFFICER:
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1. STATE OF KEALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. THE SUB INSPECTOR OF POLICE,
KONDOTTY POLICE STATION,
KONDOTTY,MALAPPURAM DISTRICT.

3. DINESH.S.P., CRIME BRANCH,
PALAKKAD.

BY DIRECTOR GENERAL OF PROSECUTIONS SRI.P.V.THAMPI

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 20/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.656 of 2007

Dated this the 20th day of March 2007

O R D E R

The petitioner is the fourth accused in a crime registered initially interalia under Sections 120B and 384 read with 34 I.P.C. Later, in the course of investigation, allegations under the Prevention of Corruption Act have also been raised against the petitioner. Though the crime was registered as early as in 2002, the petitioner was not available for arrest and was shown as absconding. The petitioner had come before this court seeking anticipatory bail. Thus, he did know about the pendency of the proceedings against him. He ultimately surrendered before the learned Magistrate, as directed by this court, in the anticipatory bail application. He was not granted bail by the learned Magistrate. He came to this court again and by Annexure A1 order dated 05/02/2007 in B.A.No.579 of 2007, the learned Magistrate was directed to release the petitioner on bail subject to appropriate conditions including the condition to surrender his passport. The learned Magistrate released the petitioner on bail. Accordingly, he surrendered the passport before the

learned Magistrate but to the shock of the investigating authorities, they found out that the petitioner had travelled abroad and held press conference at such place, abroad. In these circumstances, application was filed for cancellation of bail. The learned Magistrate, after considering the application for cancellation of bail held that bail need not be cancelled but directed the petitioner to surrender his real passport before the learned Magistrate. Accordingly, the real passport has now been surrendered.

2. The petitioner then applied before the learned Magistrate for release of the real passport to him to facilitate his journey to his place of employment abroad. He contended that release of the passport to him is essential to enable him to undertake a journey to Baharin, in connection with his business. The learned Magistrate did not grant the said prayer. That order is not produced. But it is submitted that the learned Magistrate refused the prayer as the surrender of passport was insisted by this court in Annexure A1 order.

3. The learned counsel for the petitioner submits that the passport may be directed to be released to him. If it is not so released, it shall cause serious prejudice, hardship and

inconvenience to the petitioner. His business interests shall be affected. The visas issued to him cannot be renewed. He wants to proceed to Baharin in connection with his treatment for his heart ailment. In these circumstances, it is prayed that the passport may be directed to be released.

4. The learned Public Prosecutor opposes the said prayer. The learned Public Prosecutor points out that for a long period of time of about five years, the petitioner was at large and could not be apprehended. Even after coming to know about the pendency of the proceedings and after filing the anticipatory bail application, the petitioner did not co-operate with the investigating authority. Investigation is almost complete, concedes the learned Public Prosecutor. But he submits that the chargesheet has not been filed as sanction is awaited from the Central Government to prosecute the co-accused. At this stage of the investigation, the petitioner may not be permitted to travel abroad. It is unlikely that he will be available, if such permission were granted to him. At any rate, till the chargesheet is filed, the petitioner may not be permitted to travel out of India, submits the learned Public Prosecutor.

5. I have considered all the relevant inputs. I take note of the submission of the learned Public Prosecutor that the petitioner had earlier taken the court and the investigating agency for a ride by surrendering the cancelled passport. The petitioner must be presumed to have been aware of the purpose of insisting surrender of passport. The petitioner has stealthily surrendered the cancelled passport and travelled abroad using his real passport without revealing that information to the court.

6. I find merit in the opposition of the learned Public Prosecutor. I find absolutely no justification in the submission of the learned counsel for the petitioner that the petitioner was under the impression that the cancelled passport has to be surrendered before the learned Magistrate. I shall assume that the passport number, which the petitioner was directed to surrender did refer to a cancelled passport. But even then, the petitioner could not have been blissfully ignorant about the purpose for which surrender of passport was insisted. The course adopted by the petitioner does arouse suspicion and distrust.

7. At any rate, I am satisfied that, at the moment it is not necessary to direct release of the passport to the petitioner. I

find merit in the opposition by the learned Public Prosecutor that the investigators must be given further time to complete the investigation and file the final report before the question of permitting the petitioner to travel to his place of business abroad is considered.

8. In the result, this Criminal Miscellaneous Case is dismissed. However, I may hasten to observe that the petitioner shall be at liberty to move this court again for release of the passport, after the chargesheet is filed or after three months whichever is earlier. Till then, the passport cannot be released to the petitioner.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006